



February 15, 2000

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-0548

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 132238.

The Texas Department of Criminal Justice (the "department") received a request for all reports relating to the investigation of the death of an inmate. You have submitted the responsive information for our review. You state that except for an autopsy report, the requested information is excepted from disclosure under sections 552.103, 552.107 and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.131 and its companion provision, section 552.029, were added to chapter 552 of the Government Code by the Seventy-sixth Legislature. *See* Act of May 26, 1999, 76th Leg., R.S., ch. 783, §§ 1, 2, 1999 Tex. Sess. Law Serv. 3407, 3407-08 (Vernon). Except as otherwise specifically provided by section 552.131(b) or section 552.029, section 552.131(a) excepts from disclosure information obtained or maintained by the department which relates to an inmate who is confined in a facility operated by or under contract with the department. The submitted information is not within the ambit of section 552.131(b). Basic information regarding the death of an inmate in custody must be released in accordance with section 552.029(8). This office has determined that basic information, for the purposes of section 552.029(8), includes the time and place of the incident, names of inmates and department officials directly involved in the incident, a brief narrative of the incident, a brief description

of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. We therefore conclude that, except as provided by section 552.029(8), the department must withhold the requested information from disclosure under section 552.131.¹

Because we are able to make a determination under section 552.131, we do not address the other exceptions you claim. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹This ruling is limited to the application of sections 552.131 and 552.029. This ruling does not consider the applicability and effect of the Final Judgment in the case of *Ruiz v. Collins*, No. H-78-987 (S. D. Tex., filed Dec. 11, 1992), to the information at issue. However, we note that *Ruiz* is still in effect and that it prohibits the release of certain "sensitive information," which may include information required to be released by section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order, and that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

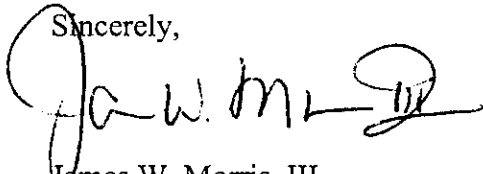
We further note that the information at issue includes two autopsy reports and two custodial death reports. Portions of this information may be subject to disclosure under other law. Section 11 of article 49.25 of the Code of Criminal Procedure provides that, with limited exceptions, autopsy records are subject to required public disclosure in accordance with Chapter 552, Government Code. Article 49.18(b) of the Code of Criminal Procedure requires law enforcement agencies to complete custodial death reports and file them with the attorney general, who is required to make the report, except for any portion that the attorney general determines is privileged, available to any interested party. This office has held that under article 49.18(b) in conjunction with a directive issued by the office of the attorney general, section one of a custodial death report filed with this office is public information. All remaining portions, including all attachments, are deemed privileged and must be withheld from the public. *See* Open Records Decision No. 521 (1989). As a general rule, statutes other than the Public Information Act that expressly make information public prevail over exceptions to required public disclosure under the Act. *See* Open Records Decision Nos. 623 (1994), 525 (1989). We express no opinion, however, as to whether such other law prevails over the judgment in *Ruiz v. Collins*. *See* Open Records Decision No. 560 (1990).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 132238

Encl. Submitted documents

cc: Mr. Scott Richard
Law Offices of Scott H. Richard
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Bedford, Texas 76021
(w/o enclosures)